16-827

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 11.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

THE ERIE RAILWAY COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 8, 1878.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United States of America, plaintiffs, and the Erie Railway Company are defendants, a manifest error hath happened to the great damage of the said The United States of America, as is said, and as appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States this second day of October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern district of New York, in the Second Circuit.

The foregoing writ is allowed. October 2d, 1878.

SAM'L BLATCHFORD,
Circuit Judge.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to forty-one, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The United States of America, plaintiff in error, against The Erie Railway Company, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this seventh day October, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsed:) U. S. Supreme Court. The United States of America, pl'ff in error, against The Erie Railway Company, defend. in error. Stewart L. Woodford, U. S. attorney. U. S. circuit court. Oct. 3, 1878. John I Davenport, clerk.

Service of a copy of the within writ of error is hereby admitted.
N. Y., Oct. 2, 1878.

SHIPMAN, B., L. & M.,
Att'ys for Def't.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you, between the United States of America, plaintiffs, and the Erie Railway Company, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as is said, and as by their complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all the things concerning the same, to the judges of the circuit court of the United States for the southern district of New York at the U. S. court-room, in New York City, together with this writ, so that you may have the same at said place before the judges aforesaid, at the October term of said court, on the third Monday of October, 1877, that, the record and proceedings aforesaid being inspected, the said judges of the circuit court may cause further to be done thereon, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this first day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

JOHN I. DAVENPORT.

The foregoing writ is hereby allowed.

SAM'L BLATCHFORD.

I hereby certify that the return to the within writ of error appears in the papers & proceedings hereto annexed.
New York, Sept. 25, 1877.

[L. S.] GEO. F. BETTS.
Clerk of the U. S. District Court for the Southern Dist. of New York.

4 UNITED STATES OF AMERICA, *ss:*

To the Erie Railway Company and its attorney, greeting:

You are hereby admonished to be and appear at a circuit court of the United States for the southern district of New York, in the second circuit,

to be holden at New York on the 3rd Monday of October, 1877, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein The United States of America are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the fifth day of June, in the year of our Lord one thousand eight hundred and seventy-seven.

SAM'L BLATCHFORD.

In the district court of the United States for the southern district of New York, on the eighth day of March, 1876.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
against
THE ERIE RAILWAY COMPANY, DEFENDANT.

SOUTHERN DISTRICT OF NEW YORK:

The United States of America, plaintiffs, by George Bliss, esquire, their attorney for the district aforesaid, complain of the Erie Railway Company, defendant, being summoned, etc., of a plea that it render unto the plaintiffs the sum of one hundred and fifty thousand dollars, which it owes to and unjustly detains from the plaintiffs.

For that whereas, heretofore, to wit, on the first day of August, in the year one thousand eight hundred and sixty-six, and long prior thereto, and ever since, to the commencement of this action, the said defendant has been a railroad company, organized and existing as a corporation under and by virtue of the laws of the State of New York, having its principal office for the transaction of its business in the district aforesaid, and within the second collection district of the State of New York, and then and there, has been indebted for money, to wit, for one million pounds sterling and upwards, for which bonds or other evidences of indebtedness had, prior to said first day of August, 1866, been issued, payable in one or more years after date, to wit, payable on the first day of September, in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing the interest were, stipulated to be paid at the rate of six per centum per annum, in gold, semi-annually, to wit, on the first day of March, and on the first day of September in each year; and pursuant to the terms and conditions of the bonds, or evidences of indebtedness aforesaid, there became payable thereafter a large amount of such interest or coupons, to wit, in the judicial and collection districts aforesaid, the amounts following, at the dates following, to wit: On the first day of September, in the year one thousand eight and sixty-six, the sum of one hundred and seventy-six thousand nine hundred and seven and $\frac{08}{100}$ gold dollars.

On the first day of March, in the year one thousand eight hundred and sixty-seven, the sum of one hundred and fifty-nine thousand five hundred and seventy-one and $\frac{62}{100}$ gold dollars.

On the first day of September, in the year one thousand eight

6 hundred and sixty-seven, the sum of one hundred and sixty-seven thousand one hundred and forty-three $\frac{75}{100}$ gold dollars.

On the first day of March, in the year one thousand eight hundred and sixty-eight, the sum of one hundred and sixty-six thousand five hundred and twenty-two and $\frac{50}{100}$ gold dollars.

On the first day of September, in the year one thousand eight hundred and sixty-eight, the sum of two hundred and nineteen thousand one hundred and eighty-nine and $\frac{10}{100}$ gold dollars.

On the first day of March, in the year one thousand eight hundred and sixty-nine, the sum of two hundred thousand seven hundred and eighty-two and $\frac{39}{100}$ gold dollars.

On the first day of September, in the year one thousand eight hundred and sixty-nine, the sum of two hundred and two thousand seven hundred and eighty-five and $\frac{32}{100}$ gold dollars.

And thereupon, and by virtue of the premises, and by force of the statutes of the United States of America, in such case provided, the defendant became subject to and liable to pay to the plaintiffs a tax of five per centum on the amount of such interest or coupons aforesaid, to wit, in the judicial and collection districts aforesaid, the amounts following, at the dates following, to wit:

On the first day of September, in the year one thousand eight hundred and sixty-six, the sum of eight thousand eight hundred and forty-five and $\frac{35}{100}$ gold dollars.

On the first day of March, in the year one thousand eight hundred and sixty-seven, the sum of seven thousand nine hundred and seventy-eight $\frac{60}{100}$ gold dollars.

On the first day of September, in the year one thousand eight hundred and sixty-seven, the sum of eight thousand three hundred and fifty-seven $\frac{20}{100}$ gold dollars.

On the first day of March, in the year one thousand eight hundred and sixty-eight, the sum of eight thousand three hundred and twenty-six $\frac{10}{100}$ gold dollars.

On the first day of September, in the year one thousand eight
7 hundred and sixty-eight, the sum of ten thousand nine hundred and fifty-nine and $\frac{45}{100}$ gold dollars.

On the first day of March, in the year one thousand eight hundred and sixty-nine, the sum of ten thousand and thirty-nine and $\frac{10}{100}$ gold dollars.

On the first day of September, in the year one thousand eight hundred and sixty-nine, the sum of ten thousand one hundred and thirty-nine and $\frac{25}{100}$ gold dollars.

And said amounts became due and payable from the defendant to the plaintiff then and there.

Yet the defendant has not as yet paid the said several sums which became due as aforesaid, or any part thereof, to the plaintiffs, but so to do has hitherto wholly neglected and refused, whereby and by force of the statute in such case provided, an action has accrued to the plaintiffs to demand and have of and from the defendant the several sums which became due as aforesaid.

Second. And also for that, heretofore, to wit, on the first day of September, in the year one thousand eight hundred and sixty-six, in the ju-

dicial district aforesaid, and in the second collection district of the State of New York, the defendant being long prior thereto and then and there a railroad company, organized and existing as a corporation under and by virtue of the laws of the State of New York, having its principal offices for the transaction of its business in the judicial and collection district aforesaid, and, then and there, being indebted for money, to wit, one million pounds sterling and upwards, for which bonds, or other evidences of indebtedness had, prior to the first day of August, in the year one thousand eight hundred and sixty-six, been issued, payable in one or more years after date, to wit, payable on the first day of September, in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing interest were, stipulated to be paid by said defendant, at the rate of six per centum, in gold, semi-annually, to wit, on the first day of March, and on the first day of September in each year; and

8 pursuant to the terms and conditions of the bonds or evidences of indebtedness aforesaid, there became due and payable, at the date first aforesaid, a large amount of such interest or coupons, to wit, the sum of eight thousand eight hundred and forty-five and $\frac{35}{100}$ gold dollars, and thereupon, and by force of the statutes of the United States of America in such case provided, there should have been made and rendered by the defendant to the assessor, or assistant assessor, to wit: to the assessor, or assistant assessor of the collection district aforesaid, on or before the tenth day of the month following that in which said interest or coupons became due and payable, a list or return, which should, then and there, have contained a true and faithful account of the amount of tax, and to which, then and there, there should have been annexed a declaration of the president or treasurer of said company, under oath or affirmation, in a form and manner which had theretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax.

Yet the defendant wholly made default in making and rendering such list or return with the declaration annexed, and in the payment of the tax as aforesaid, against the form of the statute of the United States of America in such case provided, whereby and by the force of the statute of the United States of America in such case provided, the defendant forfeited as a penalty, and there became due and payable, then and there, from the defendant to the plaintiffs, the sum of one thousand dollars.

Third. And also for that heretofore, to wit, on the first day of March, in the year one thousand eight hundred and sixty-seven, in the judicial district aforesaid, and in the second collection district of the State of New York, the defendant, being long prior thereto, and then and there a railroad company, organized and existing as a corporation under and by virtue of the laws of the State of New York, having its principal office for the

9 transaction of its business in the judicial and collection districts aforesaid, and then and there being indebted for money, to wit, one million pounds sterling and upwards, for which bonds or other evidences of indebtedness had, prior to the first day of August, in the year one thousand eight hundred and seventy-six, been issued, payable in one or more years after date, to wit, payable on the first of September, in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing interest were, stipulated to be paid by said defendant,

at the rate of six per centum in gold, semi-annually, to wit, on the first day of March, and on the first day of September in each year; and pursuant to the terms and conditions of the bonds or evidences of indebtedness aforesaid, there became due and payable at the date first aforesaid, a large amount of such interest or coupons, to wit, the sum of seven thousand nine hundred & seventy-eight and $\frac{60}{100}$ gold dollars, and thereupon, and by virtue of the premises, and by force of the statutes of the United States of America in such case provided, there should have been made and rendered by the defendant to the assessor or assistant assessor, to wit, to the assessor or assistant assessor of the collection district aforesaid, on or before the tenth day of the month following that in which said interest or coupons became due and payable, a list or return, which should then and there have contained a true and faithful account of the amount of tax, and to which, then and there, there should have been annexed a declaration of the president or treasurer of said company, under oath or affirmation in a form and manner which had theretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax.

Yet the defendant wholly made default in making and rendering such list or return with the declaration annexed, and in the payment of the tax as aforesaid, against the form of the statute of the United States of America in such case provided.

Whereby and by force of the statutes of the United States of America in such case provided, the defendant forfeited as a penalty, and there became due and payable, then and there, from the defendant to the plaintiffs, the sum of one thousand dollars.

Fourth. And also for that, heretofore, to wit, on the first day of September, in the year one thousand eight hundred and sixty-seven, in the judicial district aforesaid, and in the second collection district of the State of New York, the defendant being long prior thereto and then and there a railroad company organized and existing as a corporation under and by virtue of the laws of the State of New York, having its principal office for the transaction of its business, in the judicial and collection districts aforesaid, and, then and there being indebted for money, to wit, one million pounds sterling and upwards, for which bonds or other evidences of indebtedness had, prior to the first day of August, in the year one thousand eight hundred and sixty-six, been issued, payable in one or more years after date, to wit, payable on the first day of September, in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing interest were, stipulated to be paid by said defendant, at the rate of six per centum in gold, semi-annually, to wit, on the first day of March and on the first day of September in each year; and pursuant to the terms and conditions of the said bonds or evidence of indebtedness aforesaid, there became due and payable at the date first aforesaid a large amount of such interest or coupons, to wit, the sum of eight thousand three hundred and fifty-seven and $\frac{20}{100}$ gold dollars, and thereupon and by virtue of the premises, and by force of the statutes of the United States of America in such case provided, there should have been made and rendered by the defendant to the assessor or assistant assessor, to wit, to the assessor or assistant assessor of the collection district aforesaid, on or before the tenth day of the month following that in which said interest or coupons became due and

11 payable, a list or return, which should, then and there, have contained a true and faithful account of the amount of tax, and to which, then and there, there should have been annexed a declaration of the president or treasurer of said company, under oath or affirmation, in a form and manner which had theretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax.

Yet the defendant wholly made default in making and rendering such list or return with the declaration annexed, and in the payment of the tax as aforesaid, against the form of the statute of the United States of America in such case provided.

Whereby and by force of the statutes of the United States of America in such case provided, the defendant forfeited as a penalty, and there became due and payable, then and there, from the defendant to the plaintiffs, the sum of one thousand dollars.

Fifth. And also for that, heretofore, to wit, on the first day of March, one thousand eight hundred and sixty-eight, in the judicial district aforesaid, and in the second collection district of the State of New York, the defendant, being, long prior thereto, and, then and there, a railroad company, organized and existing as a corporation under and by virtue of the laws of the State of New York, having its principal office for the transaction of its business, in the judicial and collection districts aforesaid, and then and there being indebted for money, to wit, one million pounds sterling and upwards, for which bonds or other evidences of indebtedness had, prior to the first day of August, in the year one thousand eight hundred and sixty-six, been issued, payable in one or more years after date, to wit, payable on the first day of September, in the year one thousand eight hundred and seventy-five, and upon which interest was or coupons representing interest were, stipulated to be paid by said defendant, at the rate of six per centum in gold, semi-annually, to wit, on the first day of March, and on the first day of September, in each year; and pursuant to the

12 terms and conditions of the bonds or evidences of indebtedness aforesaid, there became due and payable, at the date first aforesaid, a large amount of such interest or coupons, to wit, the sum of eight thousand three hundred and twenty-six and $\frac{10}{100}$ gold dollars, and thereupon and by virtue of the premises, and by force of the statutes of the United States of America in such case provided, there should have been made and rendered, by the defendant to the assessor or assistant assessor, to wit, to the assessor or assistant assessor of the collection district aforesaid, on or before the tenth day of the month following that in which said interest or coupons became due and payable, a list or return, which should, then and there, have contained a true and faithful account of the amount of tax, and to which, then and there, there should have been annexed a declaration of the president or treasurer of said company, under oath or affirmation, in a form and manner which had heretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax.

Yet the defendant wholly made default in making and rendering such list or return with the declaration annexed, and in the payment of the tax aforesaid, against the form of the statute of the United States of America in such case provided.

Whereby and by force of the statutes of the United States of America in such case provided, the defendant forfeited as a penalty, and there became due and payable, then and there, from the defendant to the plaintiffs, the sum of one thousand dollars.

Sixth. And also for that, heretofore, to wit, on the first day of September, in the year one thousand eight hundred and sixty-eight, in the judicial district aforesaid, and in the second collection district of the State of New York, the defendant, being long prior thereto, and, then and there, a railroad company, organized and existing as a corporation under and by virtue of the laws of the State of New York, having its principal office for the transaction of its business in the judicial
13 and collection districts aforesaid, and then and there, being indebted for money, to wit, one million pounds sterling, and upwards, for which bonds or other evidences of indebtedness had, prior to the first day of August, in the year one thousand eight hundred and sixty-six, been issued, payable in one or more years after date, to wit, payable on the first day of September, in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing interest were, stipulated to be paid by said defendant, at the rate of six per centum, in gold, semi-annually, to wit, on the first day of March, and on the first day of September in each year; and pursuant to the terms and conditions of the bonds or evidences of indebtedness aforesaid, there became due and payable at the date first aforesaid, a large amount of such interest or coupons, to wit, the sum of ten thousand nine hundred and fifty-nine and $\frac{54}{100}$ gold dollars, and thereupon and by virtue of the premises, and by force of the statutes of the United States of America in such case provided, there should have been made and rendered, by the defendant to the assessor or assistant assessor, to wit, to the assessor or assistant assessor of the collection district aforesaid, on or before the tenth day of the month following that in which said interest or coupons became due and payable, a list or return, which should then and there have contained a true and faithful account of the amount of tax, and to which, then and there, there should have been annexed a declaration of the president or treasurer of said company, under oath or affirmation, in a form and manner which had theretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax. Yet the defendant wholly made default in making and rendering such list or return, with the declaration annexed, and in the payment of the tax as aforesaid against the form of the statutes of the United States of America in such case provided.

Whereby, and by force of the statutes of the United States of
14 America in such case provided, the defendant forfeited as a penalty, and there became due and payable, then and there, from the defendant to the plaintiffs the sum of one thousand dollars.

Seventh. And also for that, heretofore, to wit, on the first day of March, one thousand eight hundred and sixty-nine, in the judicial district aforesaid, and in the second collection district of the State of New York, the defendant being long prior thereto, and then and there a railroad company organized and existing as a corporation under and by virtue of the laws of the State of New York, having its principal office for the transaction of its business in the judicial and collection districts aforesaid, and then and there being indebted for money, to wit, one million pounds sterling and upwards,

for which bonds or other evidences of indebtedness had, prior to the first day of August, in the year one thousand eight hundred and sixty-six, been issued, payable in one or more years after date, to wit, payable on the first day of September in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing interest were stipulated to be paid by said defendant at the rate of six per centum in gold, semi-annually, to wit, on the first day of March, and on the first day of September in each year; and pursuant to the terms and conditions of the bonds or evidences of indebtedness aforesaid, there became due and payable at the date first aforesaid, a large amount of such interest or coupons, to wit, the sum of ten thousand and thirty-nine and $\frac{10}{100}$ gold dollars; and thereupon, and virtue of the premises, and by force of the statutes of the United States of America, in such case provided, there should have been made and rendered by the defendant to the assessor or assistant assessor, to wit, to the assessor or assistant assessor of the collection district aforesaid, on or before the tenth day of the month following that in which said interest or coupons became due any payable, a list or return, which should then and there have contained a true and faithful account of the
15 amount of tax and to which then and there, there should have been annexed a declaration of the president or treasurer of said company under oath or affirmation in a form and manner which had theretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax.

Yet the defendant wholly made default in making and rendering such list or return, with the declaration annexed, and in the payment of the tax as aforesaid, against the form of the statute of the United States of America in such case provided.

Whereby, and by force of the statutes of the United States of America in such case provided, the defendant forfeited as a penalty, and there became due and payable, then and there, from the defendant to the plaintiffs, the sum of one thousand dollars.

Eighth. And also that, heretofore, to wit, on the first day of September, in the year one thousand eight hundred and sixty-nine, in the judicial district aforesaid, and in the second collection district of the State of New York, the defendant being, long prior thereto, and then and there, a railroad company organized and existing as a corporation, under and by virtue of the laws of the State of New York, having its principal office for the transaction of its business in the judicial and collection districts aforesaid, and, then and there, being indebted for money, to wit, one million pounds sterling, and upwards, for which bonds or other evidences of indebtedness had, prior to the first day of August, in the year one thousand eight hundred and sixty-six, been issued, payable in one or more years after date, to wit, payable on the first day of September, in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing interest were, stipulated to be paid by said defendant, at the rate of six per centum, in gold, semi-annually, to wit, on the first day of March and on the first day of September in each year; and pursuant to the terms and conditions of the bonds or evidences of indebted-
16 ness aforesaid, there become due and payable, at the date first aforesaid, a large amount of such interest or coupons, to wit, the sum of ten thousand one hundred and thirty-nine and $\frac{25}{100}$ gold dollars, and

thereupon and by virtue of the premises, and by force of the statutes of the United States of America in such case provided, there should have been made and rendered by the defendant to the assessor or assistant assessor, to wit, to the assessor or the assistant assessor of the collection district aforesaid, on or before the tenth day of the month following that in which said interest or coupons became due and payable, a list or return, which should, then and there, have contained a true and faithful account of the amount of tax, and to which, then and there, there should have been annexed a declaration of the president or treasurer of said company, under oath or affirmation, in a form and manner which had theretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax.

Yet the defendant wholly made default in making and rendering such list or return with the declaration annexed, and in the payment of the tax as aforesaid, against the form of the statutes of the United States of America in such case provided.

Whereby, and by force of the statutes of the United States of America in such case provided, the defendant forfeited as a penalty, and there became due and payable, then and there, from the defendant to the plaintiffs, the sum of one thousand dollars.

Yet the defendant, although often requested so to do, has not yet paid to the plaintiffs the several sums which became due as aforesaid, or any part thereof, but so to do has hitherto wholly neglected and refused, to the damage of the plaintiffs one hundred and fifty thousand dollars aforesaid, and thereby, and by force of the statutes of the United States of America in such case provided, an action has accrued to the plaintiffs, to de-
17 mand and have of and from the said defendant the said sum of one hundred and fifty thousand dollars, and therefore they bring suit.

GEORGE BLISS,
U. S. Attorney.

Plea to amended declaration.

In the district court of the United States for the southern district of New York.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE ERIE RAILWAY COMPANY, DEFENDANT.

And the said the Erie Railway Company, the defendant in this suit, by H. L. Burnett, its attorney, comes and defends the wrong and injury when, &c., and for plea or answer to the amended declaration of the plaintiffs herein says, that it does not owe the said sum of one hundred and fifty thousand dollars above demanded, or any part thereof, in manner and form as the said plaintiff has above thereof complained against it, and of this it, the said defendant, puts itself upon the country, and the said plaintiff doth the like, &c.

And for a further plea in this behalf to said amended declaration, the said defendant, by leave of the court, here for this purpose, first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiff ought not to have or maintain its afore-

said action thereof against it, because it alleges that it is not true, and the said defendant denies that prior to the first day of August, 1866, it was or had been indebted for money, to wit, for one million pounds sterling and upwards, for which bonds and other evidences of indebtedness had, prior to said date, been issued, payable in one or more years after date,
18 to wit, payable on the first day of September, in the year one thousand eight hundred and seventy-five, and upon which interest was, or coupons representing the interest were, stipulated to be paid at the rate of six per centum per annum in gold, semi-annually, to wit, on the first day of March and on the first day of September in each year, but said defendant alleges that prior to said first day of August, 1866, it was indebted in the sum of eight hundred thousand pounds and no more, for which bonds of said character and description had theretofore been issued by it.

And this defendant further alleges that during all that period of time which is particularly referred to in said plaintiff's declaration herein, to wit, from and including the 1st day of August, 1866, to and including the first day of September, in the year 1869, the bonds and securities issued by said defendant above described, and known as the sterling bonds of the Erie Railway Company, were the property of and held and owned by non-resident aliens, who were not subject to the jurisdiction of the plaintiffs, the United States of America.

And this defendant further alleges that all of the interest moneys which accrued and became due and payable upon the said sterling bonds, and all the interest paid on said bonds during the said period of time hereinbefore mentioned, to wit, from and including the 1st day of August, 1866, to and including the 1st day of September, 1869, were the moneys and property of the said non-resident aliens, holders and owners of said bonds as aforesaid.

And defendant further alleges that all the interest which became due and payable, or was paid by defendant upon said bonds during said period of time as aforesaid, was exempt from any tax on the part of the plaintiffs, the United States of America, and that no tax or right of taxation accrued to said plaintiffs against this defendant for the interest which accrued and became due and payable to said non-resident aliens on said sterling bonds so held by them, or on the interest paid to said non-resi-
19 dent aliens on said bonds during said period of time, and that defendant was not under any obligation, or required by law to make and render to the assessor or assistant assessor, to wit, to the assessor or assistant assessor of the second collection district of the State of New York, on or before the tenth day of the month following that in which said interest accrued, or coupons became due and payable, a list or return which should then and there have contained a true and faithful account of the amount of tax, and to which there should have been annexed a declaration of the president or treasurer of said company, under oath or affirmation, in a form and manner which had theretofore been prescribed by the Commissioner of Internal Revenue, that the same contained a true and faithful account of said tax, nor was defendant bound or required by law to make to said assessor or assistant assessor any list or return whatever touching any interest which accrued or was paid upon the bonds aforesaid.

Wherefore this defendant prays judgment if the said plaintiff ought to have or maintain its aforesaid action thereof against it, and for its costs.

Dated N. Y., April 3d, 1876.

H. L. BURNETT,
Defendant's Attorney, 120 *Broadway*.

SHIPMAN, BARLOW, LAROCQUE & MACFARLAND, *Counsel*.

20 District court of the United States, southern district of New York.

UNITED STATES OF AMERICA
against
THE ERIE RAILWAY COMPANY.

Suit to recover taxes alleged to be due the plaintiffs on certain interest coupons paid by the defendant on bonds issued by the defendant, which payments were made in the years 1866, 1867, 1868, and 1869; and, also, to recover certain penalties alleged to be due the plaintiffs for failure of the defendant to make returns of the amount of said taxes, said suit being founded on section 122 of the act of June 30, 1864 (13th U. S. Statutes at Large, pages 284 and 285), as amended by section 9 of the act of July 13, 1866, (U. S. Statutes at Large, vol. 14, pages 138 and 139).

In the above-entitled suit the following facts are hereby agreed upon by and between the plaintiffs and defendant:

I. Prior to September 1st, 1866, the defendant had issued and sold, as hereinafter stated, sterling coupon bonds, dated September 1, 1865, the principal of which was payable ten years after date, and the principal and interest of which were, by the terms of said bonds and coupons, payable in London, England, at the office of Junius S. Morgan & Co., bankers of said London, to the amount of £800,000 sterling.

21 II. After the 1st day of March, 1868, and before the 1st day of September, 1868, the defendant issued and sold of the same class of bonds £200,000 sterling, the principal and interest of which were payable at the same place as the principal and interest of the £800,000 hereinbefore stated.

III. The rate of interest on all of said sterling loan or bonds was six per cent. per annum, payable semi-annually, on the first days of March and September in each year, respectively.

IV. Said bonds, with the coupons thereto attached, were all sold directly to J. S. Morgan & Co., J. T. Mackenzie, and Stern Brothers, all foreign bankers, and having their banking-houses and principal places of business in the city of London, and by them resold to their customers in England and on the continent of Europe.

V. That during all of said years 1866, 1867, 1868, and 1869 said bonds and coupons were all held and owned by non-resident aliens, and not by citizens of the United States, except bonds to the amount of £20,000 and the coupons thereto belonging, which latter bonds, and no more, were held and owned by a citizen or citizens of the United States residing in Europe.

VI. The amount of interest, as the same fell due on all said bonds, was provided for and sent forward by the defendant in one sum or block, to said J. S. Morgan & Co., before the dates at which the same fell due; and

on the respective dates at which the same fell due the same was paid by said J. S. Morgan & Co., at their banking-house in London, to the holders of the said bonds and coupons.

VII. The amounts and dates of said payments of interest, together with the five per cent. tax valued in currency, both at the date of each
22 payment and the date of the trial of this cause, respectively, are as follows:

Date of payment.	Amount of interest.	Amount of tax at 5 per cent.	Currency value at date of payment of interest.	Value in currency at date of trial.
Sept. 1, '66	£24,000	£1,200	Sept. 1, '66	$8,282 13	$6,228
March 1, '67	24,000	1,200	March 1, '67	8,071 27	6,228
Sept. 1, '67	24,000	1,200	Sept. 1, '67	8,215 59	6,228
March 1, '68	24,000	1,200	March 1, '68	8,253 19	6,228
Sept. 1, '68	30,000	1,500	Sept. 1, '68	10,542 63	7,785
March 1, '69	30,000	1,500	March 1, '69	9,544 71	7,785
Sept. 1, '69	30,000	1,500	Sept. 1, '69	9,682 82	7,785
	£186,000	£9,300		$62,592 34	$48,267

VIII. Included in and a part of the figures embraced in the preceding VIIth paragraph of this finding of facts are the £20,000 sterling of bonds held and owned by a citizen or citizens of the United States. The amounts and dates of the payment of the interest, together with the five per cent. tax, valued in currency, both at the date of such payment and at the date of the trial of this cause, are as follows:

Date of payment.	Amount of interest.	Amount of tax at 5 per cent.	Currency value at date of payment of interest.	Value in currency at date of trial.
Sept. 1, '66	£600	Is £30	$207 05	$155 70
March 1, '67	600	" 30	201 78	155 70
Sept. 1, '67	600	" 30	205 39	155 70
March 1, '68	600	" 30	206 33	155 70
Sept. 1, '68	600	" 30	210 85	155 70
March 1, '69	600	" 30	190 89	155 70
Sept. 1, '69	600	" 30	193 66	155 70
			$1,415 95	$1,089 90

IX. That the defendant made no returns to the assessor, or to any other officer of the internal revenue of the United States, of the payment of said interest, or any part thereof; nor did the defendant ever pay to the United States, or to any one on its behalf, 5 per cent. tax, or any tax on said interest, or any part thereof; nor did the defendant withhold said tax, or any part thereof, from the amount of said interest, but the defend-
23 ant paid the full amount of said interest to the holders of said bonds, pursuant to the true intent and obligation of said bonds, without any deduction whatever.

X. No assessment was ever made by the plaintiffs, or by any officer of the plaintiffs on the defendant, for any portion of said tax; nor was any

demand ever made on the defendant for the payment of the same to the United States until December 31st, 1872.

XI. No penalty for failure to make the return of the payment of said interest has ever been paid to the plaintiffs, or to any one on its behalf, by the defendant.

(Signed) GEORGE BLISS, *U. S. Attorney.*
(Signed) SHIPMAN, BARLOW, LAROCQUE & McFARLAND, *Attorneys for Defendant.*

United States district court.

THE UNITED STATES
vs.
THE ERIE RAILWAY COMPANY.

BLATCHFORD, J.

This is a suit brought by the United States against the Erie Railway Company to recover taxes alleged to be due to the plaintiffs on certain interest coupons paid by the defendant on bonds issued by the defendant, which payments were made in the years 1866, 1867, 1868, and
24 1869, and also to recover certain penalties alleged to be due to the plaintiffs for the failure of the defendant to make returns of the amount of said taxes. The suit is founded on section 122 of the act of June 30th, 1864 (13 U. S. Statutes at Large, 284), as amended by section 9 of the act of July 13th, 1866, (14 Id., 138). Such section, as so amended, reads as follows (the parts of the section as amended which are not found in the original section being put in brackets, and the parts of the original section which are not found in the amended section being put in italics): "Any railroad, canal, turnpike, canal navigation, or slack-water company, indebted for any money for which bonds or other evidence of indebtedness have been issued, payable in one or more years after date, upon which interest is stipulated to be paid, or coupons representing the interest, or any such company that may have declared any dividend, in scrip or money due or payable to its stockholders, [including non-residents, whether citizens or aliens,] as part of the earnings, profits, income or gains of such company, and all profits of such company carried to the account of any fund, or used for construction, shall be subject to and pay a duty [tax] of five per centum on the amount of all such interest or coupons, dividends, or profits, whenever [and wherever] the same shall be payable [and to whatsoever party or persons the same may be payable, including non-residents, whether citizens or aliens], and said companies are hereby authorized to deduct and withhold from all payments on account of any interest or coupons, any dividends, due and payable as aforesaid, the duty [tax] of five per centum; and the payment of the amount of said duty [tax] so deducted from the interest, or coupons, or dividends, and certified by the president or treasurer of said company, shall discharge said company from that amount of the dividend, or interest, or coupon on the bonds or other evidence of their indebtedness so held by any person or party whatever, except where said companies may have contracted otherwise. And a list or return shall be made and rendered to the assessor or

assistant assessor in duplicate, and one of said lists or return shall be
25 transmitted, and the duty paid to the Commissioner of Internal Revenue within thirty days after the time when [on or before the tenth day of the month following that in which] said interest, coupons or dividends became due and payable, and as often as every six months; and said list or return shall contain a true and faithful account of the amount of the duty [tax] and there shall be annexed thereto a declaration of the president or treasurer of the company, under oath or affirmation, in form and manner as may be prescribed by the Commissioner of Internal Revenue, that the same contains a true and faithful account of said duty [tax]. And for any default in making or rendering such list or return, with the declaration annexed, or of the payment of the duty (tax) as aforesaid, the company making such default shall forfeit as a penalty the sum of one thousand dollars; and in case of any default in making or rendering said list or return, or the payment of the duty [tax] or any part thereof, as aforesaid, the assessment and collection of the duty [tax] and penalty shall be made according to the provisions of law in other cases of neglect or refusal: [Provided, that whenever any of the companies mentioned in this section shall be unable to pay the interest on their indebtedness, and shall, in fact, fail to pay such interest, in such cases the tax levied by this section shall not be paid to the United States until said company resume the payment of interest on their indebtedness]."

Prior to September 1st, 1866, the defendant had issued and sold, as hereinafter stated, sterling coupon bonds, dated September 1st, 1865, the principal of which was payable ten years after date, and the principal and interest of which were, by the terms of said bonds and coupons, payable in London, England, at the office of J. S. Morgan & Co., bankers, of said London, to the amount of £800,000 sterling. After the 1st of March, 1868, and before the 1st of September, 1868, the defendant issued and sold, of the same class of bonds, £200,000 sterling, the principal and interest of which were payable at the same place as the principal and interest of the £800,000 above stated. The rate of interest on all of said bonds
26 was six per cent. per annum, payable semi-annually, on the first days of March and September of each year. Said bonds, with the coupons thereto attached, were all sold directly to foreign bankers who had their banking houses and principal places of business in said London, and were resold by them to their customers in Europe. During all of the years 1866, 1867, 1868, and 1869, all of said bonds and coupons were held and owned by non-resident aliens, and not by citizens of the United States, except bonds to the amount of £20,000, and the coupons thereto belonging, which latter bonds, and no more, were held and owned by a citizen or citizens of the United States residing in Europe. The amount of the interest, as the same fell due, on all of the said bonds, was provided for and sent forward by the defendant in one sum, to said J. S. Morgan & Co., before the dates at which the same fell due, and it was paid at the respective dates at which it fell due, by said J. S. Morgan & Co., at their banking house in London, to the holders of the said bonds and coupons. The total amount of interest so paid, from and including September 1st, 1866, to and including September 1st, 1869, was £186,000 sterling, the amount of the tax on which, at the rate of 5 per cent. would be £9,300 sterling. Included therein is the amount of interest paid on the £20,000 sterling of bonds held and

owned by a citizen or citizens of the United States, and the amount of tax thereon, such interest being £4,200 sterling, and such tax being £210 sterling. The defendant made no returns to the assessor, or to any other officer of the Internal Revenue of the United States, of the payment of the said interest or of any part thereof, nor did the defendant pay any tax to the United States on said interest or any part thereof, nor did the defendant withhold said tax or any part thereof from the amount of said interest, but the defendant paid the full amount of said interest to the holders of said bonds. No assessment was ever made on the defendant for any portion of said tax, nor was any demand ever made on the defendant for the payment of the same to the United States; until December
27 31st, 1872. The defendant has not paid to the plaintiffs any penalty for failure to make return of the payment of said interest.

The foregoing facts are agreed upon by the parties, in writing, and the case has been tried by the court, without a jury. The main question in the case is whether the defendant is liable to pay to the United States the 5 per cent. tax, being £9,090 sterling, on the £181,800 sterling of interest which it paid to non-resident aliens.

Under the decisions of the Supreme Court in United States vs. Railroad Co. (17 Wallace, 322), and Stockdale vs. Insurance Companies (20 id., 323), it must be regarded as settled, in the construction of the statute in question, that when interest is payable by a corporation to any bondholder who, for any special reason, is exempt from the tax on such interest, then the corporation is not liable to pay such tax. The tax is held to be a tax on the bondholder in effect and in substance, the corporation being the agent of the government for collecting and paying over the tax. It is really a tax on the income of the bondholder, and is a part of the income tax provided for by sections 116 to 123 of the act of 1864, and the amendments thereto. In United States v. Railroad Co. (above cited) it was held that the tax imposed by the statute in question could not be collected by the United States from a railroad corporation in respect of interest payable by it on bonds issued by it and owned by the city of Baltimore, on the ground that that city, being a municipal corporation, was a portion of the sovereign power of the State of Maryland, and was not subject to taxation by Congress upon its municipal revenues. The tax was not regarded as a tax on the corporation, as such, or on its revenues, but was held to be a tax on the creditor of the corporation, and the corporation was held not to be liable to the tax unless the creditor was liable. The same case also determines that, although the language of the statute in question may be broad enough to include, in terms, a tax on inter-
28 est payable to a party or person not subject to taxation by Congress, yet it will not be construed as applicable to such a party or person. This view is affirmed in Stockdale v. Insurance Companies (above cited).

Are the non-residents alien holders of the bonds in question in this case, subject to taxation in respect of the interest payable and paid on their bonds? In Railroad Co. v. Jackson (7 Wallace, 262) it was held, under the act of 1864, before the amendment of 1866, that Congress did not intend to impose the 5 per cent. tax as an income tax on non-resident aliens; and that the scheme of the statute, in authorizing the company to deduct from the interest payable the amount of the tax thereon, was merely

a mode of collecting that part of the income tax. But it is apparent that Congress, in the amendment of 1866, intended to have the tax extend to interest payable to non-resident aliens. In doing so it has undertaken to lay a tax, and an income tax, on non-resident aliens in respect of such interest. Can it lawfully do so?

In the case of The State Tax on Foreign-held bonds (15 Wallace, 300) the State of Pennsylvania had passed an act requiring every company incorporated by Pennsylvania, doing business therein, which pays interest to its bondholders, to retain from said bondholders, before paying such interest, a tax of 5 per centum on every dollar of interest so paid, and to pay the same to the State treasurer for the use of the State. The State court sustained the validity of the tax. The supreme court held that bonds of corporations owned by non-residents of the State were not property anywhere but in the hands of their owners; that they were thus beyond the jurisdiction of the taxing power of the State, and that the law which required the corporation to retain 5 per cent. of the interest due to the non-resident bondholder was not a legitimate exercise of the taxing power, because it was a tax on property beyond the jurisdiction of the State. The tax laid in that case was quite as much a tax on the corporation, or on moneys in the hands of the corporation, as is the tax now under
29 consideration. But the supreme court looked through the form to the substance, and held that the tax was not a tax on the corporation, or on the property of the corporations, or on property within the jurisdiction of the State, or on the moneys in the hands of the corporations, but was a tax on the debt, which was not property of the debtor, but was property in the hands of the bondholders. The Congress of the United States can have no greater power to tax persons or property not within the jurisdiction of the United States than a State has to tax persons and property not within its jurisdiction. By the tax in question it has taxed either the non-resident alien or his property out of the jurisdiction of the United States. Probably the view which led to the amendment of 1866 was that the tax was a tax on the corporation, or on the earnings, profits, income or gains of the corporation, or on money in the hands of the corporation, belonging to it. The form of the enactment is that the company shall be subject to and pay the tax on the amount of the interest it has contracted to pay, when such interest shall be payable, and, of course, before such interest shall be paid. But as the tax in this case is really a tax on the property and income of non-resident aliens, when such property is not within the jurisdiction of the United States, and is thus a tax on the non-resident aliens themselves, it is a tax which cannot be upheld.

In arriving at this conclusion, I dissent from the reasoning and decision of the circuit court of the district of Massachusetts, held by Judge Clark, in the case of The Michigan Central Railroad Company v. Slack (22 Int. Rev. Record, 337.) In that case the court while holding that taxation cannot extend beyond the jurisdiction of the taxing power, and that the objects of taxation must be within the territorial limits of the taxing power, arrived at the conclusion, that under the statute in question, the interest, when it became due and payable, was either the property of the corporation, and thus rightfully taxable, or the property of the bondholder, and thus taxable, because in the shape of funds within the jurisdiction

30 of the taxing power and under its control, the tax attaching to the interest as funds of the bondholder in the hands of the corporation. These views seem to me to run counter to the decisions of the supreme court in United States v. Railroad Company, and Stockdale v. Insurance Companies, (above cited). The latter case is not referred to by Judge Clark in his opinion.

The plaintiffs are therefore not entitled to recover the tax on the £181,800 sterling of interest which it paid to non-resident aliens, or any penalty thereon. Their right to recover the £210 sterling tax on the £4,200 sterling of interest is admitted. The defendant contends that this amount is to be recovered at its value in legal tender currency at the date of the trial or judgment. But I am of opinion that under sections 3 and 4, of the act of March 10th, 1866 (14 U. S. Stat. at Large 5), as amended by section 9 bis of the act of July 13, 1866 (id. 147), (now section 3178 of the Revised Statutes), that plaintiffs are entitled to recover the tax at its value in legal tender currency at the several dates when the interest was payable.

In accordance with the decision of this court, in the case of the United States vs. The New York Guaranty and Indemnity Co. (December 16, 1875), only one penalty is recoverable for all defaults prior to the commencement of the suit.

Roger M. Sherman (assistant district attorney) for the plaintiffs. William D. Shipman and Henry L. Burnett, for the defendants.

31 At a stated term of the United States district court for the southern district of New York, held at the United States district court room, in the city of New York, on the 28th day of May, 1877.

Present, Hon. Samuel Blatchford, judge.

THE UNITED STATES OF AMERICA
vs.
THE ERIE RAILWAY COMPANY.

The above-entitled suit coming on to be heard before the judge of the U. S. district court, southern district of New York, on the 23d day of December, 1876, upon an agreed statement of facts, the parties therein, by their respective counsel, having filed a stipulation in writing waiving a trial by jury and consenting to a trial by the court upon said agreed statement of facts;

And, on hearing R. M. Sherman, of counsel on behalf of the plaintiff, and W. D. Shipman, of counsel on behalf of the defendant, the court wishes to be advised; and thereafter, to wit, on the 28th day of May, 1877, due deliberation having been had in the premises, the court is of the opinion, and it is accordingly ordered, that the defendant have judgment on the claim by the plaintiffs for taxes on £181,800 sterling of interest, which the defendant paid to non-resident aliens, and for any penalty thereon.

That the plaintiffs have judgment for the amount claimed by the plaintiffs for taxes on £4,200 sterling of interest, which the defendant paid to non-resident citizens of the United States, to wit, the sum of £210, which became due and payable to the plaintiffs in seven equal instalments of £30 each, on the first day of September, 1866, and at the expiration of

32 six months thereafter, to wit, on the first days of March and Sep-

tember, 1867, the first days of March and September, 1868, and the first days of March and September, 1869.

And it is further ordered that the plaintiffs have judgment for the sum of £210 sterling aforesaid, or its equivalent in legal-tender currency of the United States at the several dates when the same became due and payable, as aforesaid. That the plaintiffs have judgment for one penalty for all defaults of the defendant in making lists or returns to the assessor or assistant assessor of the amount of tax payable by them, to wit, the sum of one thousand dollars.

That the defendant have judgment for all other claims for penalties aforesaid.

And it is further ordered that the clerk of this court tax the costs herein, and enter judgment accordingly.

SAM'L BLATCHFORD.

I consent to the entry of the above order.

W. D. SHIPMAN.
STEWART L. WOODFORD,
U. S. Attorney.

Therefore, it is considered that the said plaintiffs do recover against the said defendant their said debt, and also ten hundred and fifty-one $\frac{48}{100}$ dollars for their damages which they have sustained, as well on occasion of the detaining of said debt as for their costs and charges by them about their suit in this behalf expended, by the said court, now here adjudged to the said plaintiffs, and with their assent; which said debt, damages, costs, and charges in the whole amount to thirty-four hundred and sixty-seven $\frac{43}{100}$ dollars. And the said defendant, in mercy, &c.

Judgment signed this 1st day of June, 1877.

GEO. F. BETTS, *Clerk.*

It is consented that the foregoing printed matter may be pasted on page 30 of the printed return in the suit of the United States ag'st the Erie Railway Co.

S'pt. 27, 1877.

SHIPMAN, BARLOW,
LAROCQUE & McFARLAND,
For D'f't.
STEWART L. WOODFORD, *U. S. Att'y.*

33 *Assignment of error.*

U. S. circuit court, southern district of New York. Of October term, 1877.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
vs.
THE ERIE RAILWAY COMPANY, DEF'T IN ERROR.

Afterwards, to wit, on the third Monday of October, 1877, in this said term, before the judges of the circuit court of the United States for the

southern district of New York, in the second circuit, came the said plaintiffs in error, by Stewart L. Woodford, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that the court order that the defendant have judgment on the claim by the plaintiffs for taxes on £181,800 sterling of interest, which the defendant paid to non-resident aliens, and for any penalty thereon.

Whereas the court should have ordered that the plaintiffs have judgment on the claim by them for taxes on the £181,800 sterling of interest; which the defendant paid to non-resident aliens.

Also in this, to wit, that the court ordered that the defendant have judgment for all claims of the plaintiff for penalties, except for one penalty; whereas the court should have ordered that the plaintiffs have judgment for the several penalties claimed by the plaintiffs.

And this they, the United States of America, by their attorney, are ready to verify. Wherefore they pray that the judgment aforesaid, for the errors, may be revoked, annulled, and altogether held for noth-
34 ing, and that they may be restored to all things which they have lost by occasion of the judgment aforesaid.

STEWART L. WOODFORD,
U. S. Attorney.

Circuit court of the United States, southern district of New York.

THE UNITED STATES, PLAINTIFF IN ERROR,
vs.
THE ERIE RAILWAY COMPANY, DEFENDANT IN ERROR.

And afterwards, to wit, on the third Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-seven, the said the Erie Railway Company, by Shipman, Barlow, Larocque & Macfarland, its attorneys, freely comes here into court and says that there is no error, either in the record or proceedings aforesaid or in the giving of the judgment aforesaid; and it prays that the said circuit court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error; and that the judgment aforesaid, in form aforesaid, may be in all things affirmed, &c.

SHIPMAN, BARLOW,
LAROCQUE & MACFARLAND,
Att'ys for Def't in Error.

SEPT. 25, 1877.

Printed matter correct.

SHIPMAN, BARLOW,
LAROCQUE & McFARLAND,
Att'ys for Def't in Error.

(Endorsed:) U. S. circuit court. Filed Sept. 25th, 1877, John I. Davenport, clerk.

35 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the seventeenth day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

Present, the honorable Morrison R. Waite, Chief Justice of the Supreme C't of the U. S.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
THE ERIE RAILROAD COMPANY, DEFENDANT in error.

Argument of the above-entitled case upon writ of error to the district court of the U. S. for the southern district of New York, coming on to be heard:

Stewart L. Woodford, U. S. attorney, counsel for plaintiffs in error, is heard on behalf of the same.

William D. Shipman, esq'r, of counsel for said defendant in error, is heard on behalf of the same.

Curia advisore vult.

36 Circuit court of the United States, southern district of New York.

THE UNITED STATES
vs.
THE ERIE RAILWAY COMPANY.

WAITE, *Ch. J.:*

I fully concur with the learned district judge in the view he has taken of this case. The tax for the recovery of which the suit was brought was a tax upon the owner of the bond and not upon the defendant. It was not a tax, in the nature of a tax in rem upon the bond itself, but upon the income of the owner of the bond derived from that particular piece of property. The foreign owner of these bonds was not in any respect subject to the jurisdiction of the United States, neither was this portion of his income. His debtor was and so was the money of his debtor, but the money of his debtor did not become a part of his income until it was paid to him, and in this case the payment outside of the United States,

37 in accordance with the obligations of the contract which he held.

The power of the United States to tax is limited to persons, property, and business within their jurisdiction as much as that of a State is limited to the same subjects within its jurisdiction (State Tax on Foreign-held bonds, 15 Wall., 300).

The default of the defendant in making its returns was a continuing one. Only one penalty, therefore, is recoverable.

The judgment of the district court is affirmed.

(Endorsed:) U. S. circuit court south. dist. of N. Y. The United

States vs. Erie Railroad Co. Opinion. Waite, Ch. J. U. S. circuit court. Filed Aug. 2, 1878. John I. Davenport, clerk.

38 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the court rooms thereof, in the city of New York, on the 21st day of September, 1878.

Present, the Hon. Morrison R. Waite, Chief Justice.

THE UNITED STATES OF AMERICA, PLAINTIFFS in error,
against
THE ERIE RAILWAY COMPANY, DEFENDANT IN error.

This cause having come on to be heard on the return of the district court of the United States for the southern district of New York to the writ of error heretofore issued for the review of the judgment of the said district court entered therein on the 1st day of June, 1877, in favor of the above-named plaintiffs in error, and against the above-named defendant in error, for the sum of $3,467.43, damages and costs. After hearing Stewart

39 L. Woodford, esquire, of counsel for the plaintiffs in error, and William D. Shipman esq're, of counsel for the defendant in error, and due deliberation having been had,

It is ordered and adjudged that the said judgment of the said district court of the United States for the southern district of New York be, and the same is hereby, in all things affirmed.

M. R. WAITE.

(Endorsed:) U. S. circuit court, so. district of New York. The United States of America, plaintiffs in errror, ag'st The Erie Railway Co'y, defendant in error. Order of affirmance. Shipman, Barlow, Larocque and Macfarland, att'ys for defendants in error, 35 William street, N. Y. U. S. circuit court. Filed Oct. 4, 1878. John I. Davenport, clerk.

40 UNITED STATES OF AMERICA, *ss:*

To the Erie Railway Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-eight, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein the United States of America are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

SAM'L BLATCHFORD,
Circuit Judge.

OCT. 2D, 1878.

41 (Indorsed:) U. S. Supreme Court. The United States of America, plaintiffs in error, against the Erie Railway Company, defendants in error. Citation. U. S. circuit court. Filed Oct. 3, 1878. John I. Davenport, clerk.

Service of a copy of within citation hereby admitted.
N. Y., Oct. 2, 1878.

SHIPMAN, B., L. & M.,
Att'ys for Def't.

(Indorsement on cover:) No. 11. The United States, plaintiffs in error, vs. The Erie Railway Company. S. New York C. C. U. S. Filed 8th October, 1878.